

DIAMOND S.J. ENTERPRISE,
INC., DBA S. J. Live,
Plaintiff-Appellant,
v.
CITY OF SAN JOSE,
Defendant-Appellee.

No. 20-15085

Relief Needed by Date Certain
June 4, 2024

Pursuant to Federal Rules of Appellate Procedure 26, 27, 35 and 40, and pursuant to Ninth Cir. Rules 31-2.2 and 35-3, proposed *amicus curiae* First Amendment Lawyers Association respectfully moves for an extension of fourteen (14) days, to and including June 18, 2024, within which to file a brief *amicus curiae* in support of Diamond S.J. Enterprise’s petition for rehearing *en banc*. The panel decision was issued on April 30, 2024. The reasons for seeking this extension are set forth in the attached declaration of Ari Cohn.

Margo Laskowska, counsel for Respondent-Appellee City of San Jose,
consented via telephone to the filing of this motion and the proposed extension of
time on May 31, 2024.

Respectfully submitted,

June 1, 2024

/s/ Edward Rudofsky

Edward S. Rudofsky
FALA Amicus Chair
Five Arrowwood Lane
Melville, New York 11747
917-913-9697
ed@rudofskylaw.com

Attorney for First Amendment
Lawyers Association

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

DIAMOND S.J. ENTERPRISE,

INC., DBA S. J. Live,

Plaintiff-Appellant,

v.

CITY OF SAN JOSE,

Defendant-Appellee.

No. 20-15085

**DECLARATION OF ARI COHN IN SUPPORT OF FIRST AMENDMENT
LAWYERS ASSOCIATION’S UNOPPOSED MOTION FOR EXTENSION
OF TIME WITHIN WHICH TO FILE ITS BRIEF *AMICUS CURIAE* IN
SUPPORT OF PETITION FOR REHEARING *EN BANC***

1. I am a member of the First Amendment Lawyers Association (FALA), a non-profit, volunteer-based organization of attorneys dedicated to protecting and preserving the right to freedom of expression guaranteed by the First Amendment. FALA is comprised of more than 150 attorneys across the United States who represent businesses and individuals engaged in constitutionally protected expression and association.

2. On April 25, 2022, the panel issued an order vacating the submission and holding the case in abeyance pending issuance of the mandate in *Spirit of Aloha Temple v. County of Maui*, No. 19-16839. On November 29, 2022, the panel ordered supplemental briefing and the case was resubmitted on August 28, 2023. On April 30, 2024, the panel affirmed the District Court's ruling.

3. Proposed *amicus curiae* was previously granted leave and filed an *amicus* brief on the merits of the recently decided appeal (see Dkt. Nos. 22 and 61).

4. On May 13, 2024, counsel for petitioner Diamond S.J. Enterprise filed with this Court a motion to extend time for the filing of a petition for rehearing *en banc*. On May 14, 2024, this Court granted Petitioner's motion and extended the time to file until May 28, 2024.

5. On May 28, 2024, Petitioner filed its petition for rehearing. Proposed *amicus curiae* desires to file an *amicus* brief in support of the petition for rehearing, and other civil liberties organizations have expressed interest in joining that brief.

6. Pursuant to Federal Rule of Appellate Procedure 29(6), proposed *amicus curiae* First Amendment Lawyers Association's brief is due by June 4, 2024. FALA seeks 14 additional days within which to file its brief; if granted, the new filing deadline would be June 18, 2024.

7. Proposed *amicus curiae* First Amendment Lawyers Association is made up entirely of volunteers, who dedicate time in addition to their preexisting professional obligations to safeguard fundamental civil liberties through *pro bono* representation of individuals, drafting and filing briefs *amicus curiae*, and other activities requiring substantial investment of time and resources.

8. Recent events, including demonstrations related to the war in Gaza and a wide array of federal and state legislation that impact various aspects of constitutionally protected speech, have created a tremendous amount of work for FALA's members on top of their day-to-day law practice.

9. I volunteered to draft FALA's brief approximately two weeks ago, as the member who drafted the 2020 *amicus* brief is not available and no other members were able to do so. In the time since, despite diligent effort to complete the proposed brief in time for it to be reviewed and approved by the FALA Amicus Committee and Board of Directors, and to circulate it to the other civil liberties organizations that have expressed interest in joining, I have been unable to do so due to an extensive workload that included preexisting travel commitments to present at a continuing legal education program.

10. Proposed *amicus* First Amendment Lawyers Association accordingly seeks a short extension of 14 days within which to file its proposed brief, which would result in a deadline of June 18, 2024.

11. On May 31, 2024, I spoke via telephone to Margo Laskowska, counsel for Respondent-Appellee City of San Jose, who consented to the filing of this motion and the proposed extension of time.

12. The First Amendment Lawyers Association has not requested any prior extensions with regard to its deadline for filing a brief *amicus curiae* in support of the petition for rehearing. I will ensure that FALA's brief, if authorized, is filed within the time we are requesting in this motion.

I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct.

Executed on May 31, 2024, at Chicago, Illinois.



Ari Z. Cohn, Esq.
308 S. Jefferson St., Suite 318
Chicago, IL 60661
acohn@techfreedom.org
771-200-3997